

MEMORANDUM

To: Mike Ramsey
Debbie Margolis
Mayor Angeli and City Council members Escover, Harris and Williamson
Rich Bottarini
Casey McCann
Naphtali Knox

From: David Durant, City Councilmember

Date: June 16, 2003

Re: General Plan Proposed Changes

After hearing concerns about Community Development Goals and related programs and policies at our last meeting, I met with some concerned residents. I also took a good long look at the Planning Commission's proposed General Plan and reviewed significant portions of the old General Plan and the existing Zoning Ordinance.

I submitted some of my thoughts to staff, resulting in the comments from Mr. Knox in our packet this week. In evaluating Mr. Knox's instructions about our housing element obligations, I have some proposed changes.

First, as we consider these changes, to plagiarize from one of Mr. Knox's earlier writings, we need to keep in mind that the Housing Element must:

1. Contain "An assessment of [the identified] housing needs and an inventory of resources and constraints relevant to meeting these needs." (Gov. Code 65583(a));
2. Contain "A statement of the community's goals, quantified objectives, and policies relative to the maintenance, preservation, improvement, and development of housing." (Gov. Code 65583(b)) "The quantified objectives shall establish the maximum number of housing units that can be constructed, rehabilitated, and conserved" (Gov. Code 65583(b)(2)) [over the 7.5-year planning period—January 1, 1999, through June 30, 2006];
3. Contain "A ... schedule of actions ... to implement the policies and achieve the goals and objectives ..." (Gov. Code 65583(c));
4. Identify adequate sites with appropriate zoning densities and infrastructure to meet the community's need for housing (including its need for housing for low and very low income households). (Gov. Code 65583(c)(1)); and

5. Address, and where appropriate and legally possible, remove governmental constraints" to the development of housing. (Gov. Code 65583(c)(3))

I think the General Plan forwarded by the Planning Commission meets these requirements. And, I do not believe that my proposed changes alter that fact. I also believe that these proposed changes are consistent with Housing Program 1.4 and Housing Goals 5 and 6 and their supporting policies and programs.

It was brought to my attention that the ordering of the sections on page 11 and 12 is not consistent with our intentions to place heavy emphasis on neighborhood protection. So, I am proposing that we reorder the paragraphs and Goals accordingly. My proposed changes in ordering make clear that current Goals 1 and 2 are subsidiary to the "Neighborhoods" text and Goal 3. Contextually, it seems to me that maintaining balance and cohesive development of vacant and underutilized land is part of preserving and enhancing neighborhoods. I know we'll have to be sensitive to the other places that necessarily get changes (references in tables, etc.). But, I think this is a worthwhile change.

Before that, however, I've set forth at the outset that "none of the Community Development Programs under Community Development Goals 1, 2 and 3 are intended or shall be construed to reduce the "Potential Units, Net" specified on Table H22 or to disallow or unduly hinder the specific "Proposed General Plan Land Use" or "Proposed Zoning" changes identified on General Plan Table H22 for parcels identified by parcel number on that table." What that does, in my view, is say that the parcels identified on p. 92 and the first three parcels (those with parcel numbers) on p. 93 will be allowed (without reference to the language I am proposing to revise) to be developed consistent with what we told HCD we would do. What it also does is allows us to apply the 75% rule and other restrictions to the "65 parcels" that are not specified for very low or low housing.

Turning now to the 75% rule, the Planning Commission-approved change in the proposed General Plan that exempts certain properties from the so-called 75% rule is actually a set of changes from the old Measure B requirements. Recognizing that Measure B sunset, the goals of Measure B are still important to many residents. So, it is worth exploring the changes inherent in the proposed language.

Under the Planning Commission proposed language, the exceptions apply to every property, regardless of size, if it is deemed unsuitable due to noise, traffic or proximity to nonresidential uses, if it meets the other criteria. In light of the noise contours along major roadways in our city, the exception could apply to a huge amount of property in the city. That is, under the old General Plan, the Noise Level Map (Map VIII-6) and the goals, policies and programs related to development (See pages VIII-32-35), one could conclude that any place along our arterials and collectors (see Map VIII-6) would now be de facto acceptable places for rezonings for greater residential density, as a matter of right. Of similar effect is the "Noise" portion of the new proposed Safety and Noise Element (pp. 60-64 of the Planning Commission Approved General Plan). I do not believe that was our intention.

I therefore propose that Program 3.2 be modified to clarify the 75% rule. First, as discussed at our last meeting, it clarifies that the properties must be "deemed by the City Council, following a hearing and recommendation from the Planning Commission, as

unsuitable for single family residential use by virtue of noise, traffic or proximity to nonresidential uses.” It then adds the caveat that “[n]otwithstanding the “Noise” section of the Safety and Noise Element of this General Plan (including Safety and Noise Goal 7 and the Policies and Programs contained herein), noise, alone, shall not be sufficient cause for deeming properties unsuitable for single family residential use.”

Because I do not believe it was our intention to allow owners or developers to invoke this provision whenever it is not profitable or not profitable enough to built without rezoning, my proposed revision disallows “profitability” from being a deciding factor, by adding “[t]o support Housing Goal 5 and encourage reuse, reinvestment, and renovation of existing affordable housing stock, lack of profitability from lower density development of a property (as opposed to higher density) shall not be a factor in deeming properties unsuitable for single family residential use.”

Another change made to the old exception to the 75% rule was that the old rule applied to properties of 20,000 sq. ft. or less. Under the Planning Commission’s approved General Plan, the 75% rule exception would no longer be limited to just those properties at or below 20,000 sq. ft. To really protect neighborhoods, however, while still not running afoul of HCD, I think I have figured out a way to help. Simply put, I think we can amplify the sentence that currently reads “[d]evelopment of the area or property to be redesignated shall not have growth inducing impacts or significant traffic or noise impacts on existing residential neighborhoods.” I searched high and low for a definition of “growth inducing impact,” but, to no real avail. To be sure, by adopting a General Plan and a Housing Element, we are planning to accommodate a certain degree of growth. And, thus, the General Plan itself is growth inducing. And, by allowing for any increase in residential density, whether exempt from the 75% rule or not, we are definitionally allowing growth inducing impacts. So, I have tried to clarify that we are not trying to eliminate all rezonings that are growth inducing; only the one’s that are significantly growth inducing. To address this, I propose adding “significant” in front of “growth inducing” in the section covering the 75% rule.

To further aid future Planning Commissions and City Councils, I also propose adding the amplification that “[i]ntensification of land use on properties larger than 20,000 square feet is rebuttably presumed to have significant growth inducing impacts absent appropriate design and mitigations designed to minimize impacts on schools, traffic and residential neighborhoods.” In my view, since this involves public policy, the rebuttable presumption imposes upon the party against whom it operates the burden of proof as to the nonexistence of the presumed fact. (That’s essentially straight out of the California Evidence Code). Here, that means that one seeking a rezoning for a property larger than 20,000 square feet (approximately 1/2 acre) has to prove that it will not have significant growth inducing impacts or significant traffic or noise impacts on existing residential neighborhoods. That means that intensification IS permissible for a parcel over 20,000 square feet, but only if one can prove it is not going to have a significant growth inducing impact or significant traffic or noise impacts on existing residential neighborhoods. One seeking rezoning can meet his/her/its burden by making the required showing that due to appropriate design and mitigations designed to minimize impacts on schools, traffic and residential neighborhoods, its rezoning will not have the feared significant impacts. This would accommodate future developments designed and built like Ellinwood or Rolling Green, in appropriate locations. If we have adopted the change that clarifies that this limitation does not affect the identified H22 parcels, I cannot imagine that it would constitute a sufficiently significant change to require

resubmitting the Housing Element to HCD. And, I think this is also consistent with Economic Strategy Program 4.5.

Turning away from the 75% language, it was also brought to my attention that programs 1.3 and 1.4 from the 1990 General Plan were useful tools to aid the City in achieving community-wide benefits from development. These programs allowed for increasing zoning under certain circumstances, with certain tradeoffs and protections. So, I've added new Programs 1.2, 1.3 and 1.4 (which will be 2.2, 2.3 and 2.4 when my suggested revisions, if accepted, are reordered). Each is purposefully slightly different.

Under 1.2, intensifying rezonings or conversions from Commercial to Residential would require a development agreement assuring excellence of design and a combination of the following: provision of affordable housing pursuant to the policies contained in the City's Housing Element; provision of developed parkland or recreation facilities pursuant to this Community Development Element; effective mitigation of environmental constraints, noise, traffic and other hazards; and compatibility with adjacent development. This is consistent with Economic Strategy 4.4 and Growth Management Goal 2. And, I think this solution also addresses the concern raised by Council member Williamson regarding conversions to mixed use, as I would clump "mixed use" in with "residential" for these purposes. Of course, we could be more specific and have my proposed language say "mixed use or residential uses." We could also add that the development agreement, "to the degree it relates to a conversion to mixed use uses best efforts to avoid loss of retail square footage or loss of income to the City." I also like Mr. Knox's proposed amendment to Economic Strategy Program 3.2 as part of this.

Under the Zoning Ordinance, and California state law, a development agreement is specifically designed "to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic cost of development..." and "[t]he objective of such an agreement is to provide for vesting of certain development rights in the property by granting assurances that, upon approval of the project, the applicant may proceed with the project in accordance with existing policies, rules and regulations, subject to the conditions of approval..." Under our Zoning Ordinance, a development agreement must "specify all of the following: the duration of the agreement; the permitted uses of the property, including mix and type of uses; the density or intensity of use; the maximum height and size of proposed buildings; and provisions for reservation or dedication of land for public purposes."

A development agreement may also "include conditions, terms, restrictions, and requirements for subsequent discretionary actions, provided that such conditions, terms, restrictions, and requirements shall not prevent development of the land for the uses and to the density or intensity of development set forth in the agreement; provide that construction shall be commenced within a specified time and that the project or any phase be completed within a specified time; include terms and conditions relating to applicant financing of necessary public facilities and subsequent reimbursement over time; provide that a particular rule, regulation or policy will apply as it exists at the time of building permit issuance (for example, building code standards and development processing and impact fees); provide for specific penalties for failure to perform." There are other parts to it, but the idea here is to allow intensification of zoning ONLY when the City has an active hand in designing a project – essentially allowing us to mold what is allowed to be built. This, to me, is an important limitation, because a straight intensified zoning would normally run with the land.

Program 1.3 also uses the 'tools' from the 1990 General Plan Programs 1.3 and 1.4, with a twist – I've given people who want to increase density an opportunity to use a gift of developed parkland or recreation facilities as a factor to be specifically considered as part of their application. This is consistent with our emphasis on increasing parkland and recreation facilities, including Growth Management Policy 2A. So, it now would provide that "when determining specific densities for residential projects, City officials will use as their starting point the minimum density for the property's proposed land use designation set forth in this General Plan and the underlying zoning; provided, however, that densities above the minimum may be achieved only through a combination of the following: excellence of design, provision of affordable housing pursuant to the policies contained in the City's Housing Element; provision of developed parkland or recreation facilities pursuant to this Community Development Element; effective mitigation of environmental constraints, noise, traffic and other hazards; and compatibility with adjacent development." I think this also addresses the concern that Council member Williamson raised regarding the definition of Multifamily Very Low density.

Another change from the 1990 General Plan to that proposed by the Planning Commission appears to be the elimination of limitations on the conversion of residentially zoned property to commercial uses. I have presumed, based on the explanation on p. 94, that the language on page 12 needs to be clarified. Page 94 indicates that the redesignation may be to higher density residential provided certain factors. That is, neither page 94 nor page 12 relate at all to rezonings for commercial uses. In studying this, however, I decided to try to clean this up in light of the Economic Development Strategies and my view that we need to preserve residentially zoned properties as residential wherever possible. I think this is consistent with HCD policy and practice. So, I do not see a problem with putting in such a protection. So, my proposed Program 1.4 deals specifically with protecting residential land from redesignations to commercial uses. It relies on similar protections and amenities as Program 1.3. It is my view that this is a significant deterrent to converting residential land to commercial use. It would read: "Notwithstanding anything to the contrary in the Economic Strategy Element, changes in land use designation from residential to commercial uses are discouraged, and City officials shall only permit such changes, following adoption of this General Plan, when the change in land use is accompanied by a combination of the following: excellence of design, provision of affordable housing pursuant to the policies contained in the City's Housing Element (especially, Housing Goal 3 and Housing Program 1.7); provision of developed parkland or recreation facilities pursuant to this Community Development Element; effective mitigation of environmental constraints, noise, traffic and other hazards; and compatibility with adjacent development." The foregoing also address Council member Williamson's concerns regarding the absence of programs to correct the parkland shortage.

After tackling that one, I got to thinking about intensification of commercial land use, which has not really been addressed. So, I propose adding a new Program 2.2 (it would be 1.2 under the existing Goal 1, the goal of maintaining the historic balance among different types and intensities of use) to address intensification of commercial land use (for example, from neighborhood business to retail business or from retail business to PAO, and so on). It would read "Following adoption of this General Plan, when making decisions regarding intensification of commercial land use designations, City officials shall only permit such changes when a change in land use is accompanied by a combination of the following: excellence of design; provision of developed parkland or

recreation facilities pursuant to this Community Development Element; effective mitigation of environmental constraints, noise, traffic and other hazards; and compatibility with adjacent development.” To me, this says that even if the area around neighborhood businesses changes, we’re not going to allow intensified commercial activity unless there are tradeoffs and protections. This is also consistent with Economic Strategy Programs 4.4 and 4.5, and, again, Growth Management Policy 2A.

Attached are two versions of the “legislative notation” or “redline” version of my proposed changes to pages 11 and 12. The first is keeping the existing numbering (Attachment A), so you can tell what exactly is changed. The second (Attachment B) shows how it would appear after it is reordered.

Mr. Bade and Ms. Gollop sent a letter regarding Safety and Noise Program 7.6. I agree with them. It should read: “Amend Municipal Code Chapter 5-1 to include a provision prohibiting recycling pickups and shopping center parking lot vacuuming or sweeping (using machinery) between 10 p.m. and 7 a.m.” That is consistent with the restrictions we put on construction and demolition.

Attachment A

Proposed Changes Before Reordering:

The overall land use pattern established by existing development is anticipated to continue through the 20-year timeframe of this General Plan. None of the Community Development Programs under Community Development Goals 1, 2 and 3 are intended or shall be construed to reduce the “Potential Units, Net” specified on Table H22 or to disallow or unduly hinder the specific “Proposed General Plan Land Use” or “Proposed Zoning” changes identified on General Plan Table H22 for parcels identified by parcel number on that table.

Community Development Goal 1. Maintain the historic balance among different types and intensities of residential development, commercial retail, office uses, and open space.

Community Development Policy 1A. Encourage uses needed by the community at appropriate locations.

Community Development Program 1.1. Amend the Zoning Ordinance to direct uses desired by the community to specific zoning districts.

Community Development Program 1.2. Following adoption of this General Plan, when making decisions regarding requests seeking intensification of residential zoning or land use designations or changes in land use designations from commercial to residential uses, City officials shall only permit such changes when a change in land use is accompanied by a development agreement (pursuant to Zoning Ordinance Section 35-33) assuring excellence of design and a combination of the following: provision of affordable housing pursuant to the policies contained in the City’s Housing Element; provision of developed parkland or recreation facilities pursuant to this Community Development Element; effective mitigation of environmental constraints, noise, traffic and other hazards; and compatibility with adjacent development

Community Development Program 1.3. Following adoption of this General Plan, when determining specific densities for residential projects, City officials will use as their starting point the minimum density for the property’s proposed land use designation set forth in this General Plan and the underlying zoning; provided, however, that densities above the minimum may be achieved only through a combination of the following: excellence of design, provision of affordable housing pursuant to the policies contained in the City’s Housing Element; provision of developed parkland or recreation facilities pursuant to this Community Development Element; effective mitigation of environmental constraints, noise, traffic and other hazards; and compatibility with adjacent development.

Community Development Program 1.4. Notwithstanding anything to the contrary in the Economic Strategy Element, changes in land use designation from residential to commercial uses are discouraged, and City officials shall only permit such changes,

following adoption of this General Plan, when the change in land use is accompanied by a combination of the following: excellence of design, provision of affordable housing pursuant to the policies contained in the City's Housing Element (especially, Housing Goal 3 and Housing Program 1.7); provision of developed parkland or recreation facilities pursuant to this Community Development Element; effective mitigation of environmental constraints, noise, traffic and other hazards; and compatibility with adjacent development.

Community Development Goal 2. Generate thriving, attractive and cohesive development at vacant or underutilized sites.

Community Development Policy 2A. Revitalize commercial areas to benefit those who live and work in Pleasant Hill.

Community Development Policy 2B. Require new development to adhere to high standards of quality in design.

Community Development Program 2.1. Amend the Zoning Ordinance to include design guidelines for future non-residential development, redevelopment, and renovation that promote variety in building design, consistent with Community Development Programs 1.2, 1.3 and 1.4.

Community Development Program 2.2. Following adoption of this General Plan, when making decisions regarding intensification of commercial land use designations, City officials shall only permit such changes when a change in land use is accompanied by a combination of the following: excellence of design; provision of developed parkland or recreation facilities pursuant to this Community Development Element; effective mitigation of environmental constraints, noise, traffic and other hazards; and compatibility with adjacent development.

Neighborhoods

Retaining the character and charm of residential neighborhoods is a top priority for Pleasant Hill residents. Most neighborhoods are relatively isolated from commercial, retail and office developments, with homes located on local or minor collector streets, rather than busier arterial roadways. Residents generally are not exposed to heavy traffic and noise, and live close to parks and elementary schools (see the *Creeks and Neighborhoods* map on page 13).

Single-family neighborhoods in Pleasant Hill generally have kept their original low-density character. However, some areas are experiencing a transition as older homes undergo renovation, and many residents are concerned that more-massive remodeled homes are not compatible with the modest scale of the surrounding neighborhoods. Multifamily developments, which often provide housing to meet the needs of the growing senior population and families less able to afford detached housing, generally are separated from single-family neighborhoods.

Community Development Goal 3. Preserve and enhance residential neighborhoods.

Community Development Policy 3A. Encourage aesthetic enhancement of residential areas, while retaining the charm and character of individual neighborhoods.

Community Development Program 3.1. Amend the Zoning Ordinance to include design guidelines for future residential development, redevelopment, and renovation.

*Community Development Program 3.2. **Following adoption of this General Plan, allow** rezoning land use redesignations that increases residential density only when 75 percent of the boundary of the area to be rezoned redesignated is adjacent to land with the same or higher-density zoning land use designation.*

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Exempt from the 75 percent rule are properties deemed by the City Council, following a hearing and recommendation from the Planning Commission, as unsuitable for single family residential use by virtue of noise, traffic or proximity to nonresidential uses. Notwithstanding the "Noise" section of the Safety and Noise Element of this General Plan (including Safety and Noise Goal 7 and the Policies and Programs contained herein), noise, alone, shall not be sufficient cause for deeming properties unsuitable for single family residential use. To support Housing Goal 5 and encourage reuse, reinvestment, and renovation of existing affordable housing stock, lack of profitability from lower density development of a property (as opposed to higher density) shall not be a factor in deeming properties unsuitable for single family residential use. Development of the area or property to be redesignated shall not have **significant** growth inducing impacts or significant traffic or noise impacts on existing residential neighborhoods. **Intensification of land use on properties larger than 20,000 square feet is rebuttably presumed to have significant growth inducing impacts absent appropriate design and mitigations designed to minimize impacts on schools, traffic and residential neighborhoods.**

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Attachment B

Proposed Changes After Reordering:

The overall land use pattern established by existing development is anticipated to continue through the 20-year timeframe of this General Plan. None of the Community Development Programs under Community Development Goals 1, 2 and 3 are intended or shall be construed to reduce the “Potential Units, Net” specified on Table H22 or to disallow or unduly hinder the specific “Proposed General Plan Land Use” or “Proposed Zoning” changes identified on General Plan Table H22 for parcels identified by parcel number on that table.

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Community Development Goal 1. Preserve and enhance residential neighborhoods.

Community Development Policy 1A. Encourage aesthetic enhancement of residential areas, while retaining the charm and character of individual neighborhoods.

Community Development Program 1.1. Amend the Zoning Ordinance to include design guidelines for future residential development, redevelopment, and renovation.

Community Development Program 1.2. Following adoption of this General Plan, allow rezoning land use redesignations that increases residential density only when 75 percent of the boundary of the area to be rezoned redesignated is adjacent to land with the same or higher-density zoning land use designation.

Exempt from the 75 percent rule are properties deemed by the City Council, following a hearing and recommendation from the Planning Commission, as unsuitable for single

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Community Development Goal 2. Maintain the historic balance among different types and intensities of residential development, commercial retail, office uses, and open space.

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Community Development Program 2.2. Following adoption of this General Plan, when making decisions regarding requests seeking intensification of residential zoning or land use designations or changes in land use designations from commercial to residential uses, City officials shall only permit such changes when a change in land use is accompanied by a development agreement (pursuant to Zoning Ordinance Section 35-33) assuring excellence of design and a combination of the following: provision of affordable housing pursuant to the policies contained in the City’s Housing Element; provision of developed parkland or recreation facilities pursuant to this Community Development Element; effective mitigation of environmental constraints, noise, traffic and other hazards; and compatibility with adjacent development

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Community Development Policy 3A. Revitalize commercial areas to benefit those who live and work in Pleasant Hill.

Community Development Policy 3B. Require new development to adhere to high standards of quality in design.

Community Development Program 3.1. Amend the Zoning Ordinance to include design guidelines for future non-residential development, redevelopment, and renovation that promote variety in building design, consistent with Community Development Programs 2.2 2.3 and 2.4.

Community Development Program 3.2. Following adoption of this General Plan, when making decisions regarding intensification of commercial land use designations, City officials shall only permit such changes when a change in land use is accompanied by a combination of the following: excellence of design; provision of developed parkland or recreation facilities pursuant to this Community Development Element; effective mitigation of environmental constraints, noise, traffic and other hazards; and compatibility with adjacent development.

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